

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**MILTON TODD,**

**Defendant.**

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**Case No. 6:19-CV-03367-MDH**

**ORDER**

Before the Court is the Report and Recommendation of the Magistrate Judge. (Doc. 10). The Magistrate Judge found by clear and convincing evidence that Defendant suffers from a mental disease or defect that creates a substantial risk of bodily injury to another person or serious damage to the property of another, were he to be released, and recommended that the Defendant be committed to the custody of the Attorney General under 18 U.S.C. § 4246. Defendant has filed exceptions (Doc. 11) and the matter is ripe for review.

On September 18, 2017, Defendant was sentenced in the Superior Court of the District of Columbia for the offense of robbery. (Doc. 1-1 at 2). Defendant has been incarcerated at the USMCFP since September 29, 2017. (Doc. 1-3 at 2). On August 28, 2019, a panel of psychologists issued a forensic psychological report, wherein they diagnosed Defendant with schizophrenia.. (Doc. 1-3 at 14). His symptoms include delusional thinking, visual and auditory hallucinations, disorganized behavior, and tangential speech. *Id.* Based on those diagnoses, symptoms, his history of violence and conduct at the USMCFP and other penal institutions, lack of viable release plan, his limited progress in treatment thus far, and several historical and clinical risk factors for future violence, the panel found his release would create a substantial bodily injury to another person or

serious damage to property of another and recommended civil commitment under 18 U.S.C. § 4246. *Id.*

Defendant's counsel requested an independent psychological evaluation from Richart L. DeMier, Ph.D., ABPP. (Doc. 6). Defendant participated in the evaluation on January 21, 2020. (Doc. 6 at 1). In her report, Dr. DeMier concurred with the opinion of the Risk Assessment Panel, concluding Defendant suffered from a severe mental illness, had many risk factors for future violence, lacked insight into his condition, had no viable release plan, and that "his release would create a substantial risk of bodily injury to another person or serious damage to property of another" and recommended § 4246 commitment. *Id.* at 6-7.

The Magistrate Judge held an evidentiary hearing on Plaintiff's Petition on February 25, 2020. (Doc. 8). At the hearing, Defendant stated he does not believe he has a mental illness. (Doc. 9 at 2-3). He stated he is taking his medication voluntarily and that if released he would not be a danger to other people or their property. *Id.* at 4-6.

In light of the conclusions of the Risk Assessment panel and the independent psychological evaluator, the Magistrate Judge recommended Defendant be committed under § 4246. Defendant excepts to the recommendation of the Magistrate Judge, arguing the government has not met its evidentiary burden to detain Defendant under § 4246. (Doc. 11). Defendant points solely to his testimony at the evidentiary hearing held before the Magistrate Judge.

After carefully review of the record, the Court finds that Defendant's testimony as to his dangerousness and his diagnoses is not credible in the face of the unanimous contrary conclusions reached by the Risk Assessment Panel and his own psychological evaluator. The Court finds by clear and convincing evidence that Defendant suffers from a mental disease or defect that creates a substantial risk of bodily injury to another person or serious damage to the property of another,

were he to be released. As such, the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED**. Defendant is **COMMITTED** to the custody of the Attorney General pursuant to 18 U.S.C. § 4246.

**IT IS SO ORDERED.**

DATED: March 31, 2020

/s/ Douglas Harpool  
**DOUGLAS HARPOOL**  
**UNITED STATES DISTRICT JUDGE**